

California Regional Water Quality Control Board
Santa Ana Region
Staff Report
January 22, 2004

ITEM: 14

SUBJECT: Order No. R8-2004-0016, Affirming Administrative Civil Liability
Complaint No. R8-2003-0124, Union Pacific Railroad,
Bloomington, San Bernardino County

BACKGROUND

On December 12, 2003, the Executive Officer issued Administrative Civil Liability Complaint (ACL) No. R8-2003-0124 (copy attached) to Union Pacific Railroad (UPR) for alleged violations of the State's General Permit for Storm Water Runoff Associated with Industrial Activity (General Permit). In the ACL, the Executive Officer proposed an assessment of \$3,000 for the alleged violations.

INTRODUCTION

The matter before the California Regional Water Quality Control Board, Santa Ana Region (Board) is whether to adopt Order No. R8-2004-0016.

ACL No. R8-2003-0124 was issued by the Executive Officer to Union Pacific Railroad for failing to submit the annual report.

DISCUSSION

The General Permit regulates the discharge of storm water from industrial sites as required under Section 402(p) of the Federal Clean Water Act. Coverage under the permit is obtained by filing a Notice of Intent (NOI), site map, and fee (annual fee of \$830), with the State Water Resources Control Board. UPR filed an NOI and obtained coverage under the General Permit, WDID No. 836S0044573. UPR is located at 19100 Slover Street, Bloomington, California.

The General Permit requires that all facility operators shall submit an annual report by July 1 of each year. Because the annual report was not submitted, a Notice of Noncompliance was issued on August 1, 2003. A second Notice of Noncompliance was issued on September 17, 2003. UPR received both notices. The second notice of Noncompliance requested submittal of the completed annual report to the Board office by October 18, 2003, with a statement explaining why the annual report was not submitted by the July 1 deadline, and the measures that would be taken to ensure that future annual reports are submitted on time. The second notice warned the discharger of the mandatory minimum penalty for failure to submit the annual report.

On October 21, 2003, Board staff spoke to Mr. Duffy Exon, who said that he would submit the report. On December 12, 2003, the Executive Officer issued ACL No. R8-2003-014. Subsequently on December 19, 2003, UPR submitted the annual report.

The facility violated the California Water Code and the Clean Water Act. The facility was repeatedly requested to comply with the storm water regulations by timely submittal of Annual Report.

Section 13399.33 of the Water Code provides that the Regional Board shall assess a mandatory minimum penalty of \$1,000 for failure to submit the Annual Report.

Section 13385(a)(2) of the California Water Code also provides that any person who violates waste discharge requirements issued pursuant to the Federal Clean Water Act shall be civilly liable. Section 13385(c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day the violation occurs.

The facility is alleged to have violated the General Permit for 163 days (from July 2, 2003 to December 12, 2003). The maximum liability for this violation is \$1,630,000.

Section 13385(e) specifies factors the Board shall consider in establishing the amount of civil liability. These factors are discussed below.

1. Nature, Circumstances, Extent and Gravity of the Violations

The discharger was fully aware of the requirements of the General Permit to submit an Annual Report by the July 1 deadline. As of December 12, 2003, this office had not received the 2002-03 Annual Report.

2. Ability to Pay the Proposed Assessment

The discharger has not provided any information to indicate that it would have difficulty paying the proposed assessment.

3. Prior History of Violations

There is no prior history of violations.

4. Degree of Culpability

The discharger submitted an NOI and agreed to comply with the terms and conditions of the General Permit. The discharger is therefore fully culpable for violating the General Permit, which implements the Clean Water Act. Finally, in addition to the two Notices of Noncompliance, staff contacted UPR

personnel, reminding them of the requirement to submit the Annual Report and the consequences of non-submittal.

5. Economic Benefit or Savings, if any, Resulting from the Violations

By not preparing an Annual Report, UPR saved approximately \$500 or more, based on whether facility personnel performed and documented the visual observations and runoff sampling requirements set forth in the General Permit.

STATEWIDE ENFORCEMENT POLICY

On February 19, 2002, the State Water Resources Control Board adopted a State Water Quality Enforcement Policy to ensure that enforcement actions throughout the State are fair, firm, and consistent. The above-described administrative civil liability complaint is in accordance with the State Enforcement Policy.

RECOMMENDATION

After consideration of the above factors, staff recommends that the Board adopt Order R8-2004-0016, affirming the assessment of \$3,000 specified in Administrative Civil Liability Complaint No. R8-2003-0124 issued by the Executive Officer on December 12, 2003.

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION**

In the matter of:)	Order No. R8-2004-0016
)	for
Union Pacific Railroad)	Administrative Civil Liability
1416 Dodge Street, Room 930)	
Omaha, NE, 68179)	
)	
Attention: Lanny A. Schmid)	

The California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), held a hearing on January 22, 2004 to receive testimony and take evidence on the allegations contained in Complaint No. R8-2003-0124, dated December 12, 2003, and on the recommendation for the imposition of administrative civil liability pursuant to Water Code Sections 13385 and 13399.33 in the amount of \$ 3,000. The Board finds as follows:

1. On April 17, 1997, the State Water Resources Control Board (SWRCB) adopted Waste Discharge Requirements, Order No. 97-03-DWQ, (NPDES No. CAS000001), General Permit for Storm Water Discharges Associated with Industrial Activities (Permit). Union Pacific Railroad (UPR), is authorized to discharge storm water under the Permit, WDID 836I004573. The Permit requires UPR to submit an annual report by July 1 of each year. Prior to the July 1, 2003 deadline, the SWRCB mailed a notice to UPR indicating that the blank annual report form was available from the website and a hard copy would only be mailed if requested. UPR did not submit the annual report by July 1, 2003. Subsequently, Board staff sent two certified Notices of Noncompliance (NNCs) to UPR, the first one on August 1, 2003 and the second one on September 17, 2003. These NNCs reminded UPR that the annual report had not been received and that there is a mandatory penalty for non-submittal of the annual report. The second NNC required UPR to submit the annual report by October 18, 2003.
2. Since the annual report was not submitted by the specified date, Board staff contacted Mr. Duffy Exon, Environmental Manager at UPR, by telephone on October 21, 2003 and October 27, 2003. Mr. Exon was told about the mandatory penalty provision of the Water Code for non-submittal of the annual report. Mr. Exon indicated that the delay was due to shortage of staff and that the report would be submitted in the near future.
3. UPR failed to submit the annual report to the Board office within 60 days from the date of the original NNC.

4. Water Code Section 13399.33(c) requires the Board to assess a mandatory minimum penalty of one thousand dollars (\$1,000) and Section 13385 allows the Board to assess additional penalties for violations of Waste Discharge Requirements.
5. On December 12, 2003, the Executive Officer issued Administrative Civil Liability Complaint No. R8-2003-0124 to UPR, proposing that the Board impose civil liability in the amount of \$3,000 on UPR for the violations cited above. The complaint further proposed that \$1,000 of this amount would be suspended if the annual report were received by January 5, 2004. The annual report was submitted on December 19, 2003.
6. On December 19, 2003, the Board received annual report submitted by UPR.
7. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 2100 et seq.) in accordance with Section 15321, Chapter 3, Title 14, California Code of Regulations.

IT IS HEREBY ORDERED that, pursuant to California Water Code Sections 13385 and 13399.33, administrative civil liability shall be imposed on UPR, in the amount of \$3,000 as proposed in Complaint No. R8-2003-0124 for the violations cited, payable as set forth below.

1. Union Pacific Railroad shall pay \$2,000 to the State Water Resources Control Board by February 23, 2004; \$1,000 from the original assessment of \$3,000 is hereby suspended.
2. The Executive Officer is authorized to refer this matter to the Attorney General for enforcement.

Pursuant to Water Code Section 13320, you may petition the State Water Resources Control Board for a review of this Order. If you choose to do so, you must submit the petition to the State Board within 30 days of the Regional Board's adoption of this Order.

I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the California Regional Water Quality Control Board, Santa Ana Region, on January 22, 2004.

Gerard J. Thibeault
Executive Officer

STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

In the matter of:)	Complaint No. R8-2003-0124
)	for
Union Pacific Railroad)	Administrative Civil Liability
1416 Dodge Street, Room 930)	
Omaha, NE 68179)	
)	
Attention: Lanny A. Schmid)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. You are alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), may impose liability under Sections 13385 and 13399.33 of the California Water Code.
2. A hearing in this matter has been scheduled for the Board's regular meeting on January 22, 2004, at 25541 Barton Road, Loma Linda. You or your representative will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Board. An agenda for the meeting will be mailed to you not less than 10 days prior to the hearing date.
3. At the hearing, the Board will consider whether to affirm, reject or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. The Union Pacific Railroad (UPR) facility, located at 19100 Slover Street, Bloomington, is currently regulated under the State's General Permit for Storm Water Discharges Associated with Industrial Activities, Water Quality Order No. 97-03-DWQ, NPDES No. CAS000001 (General Permit). The facility's WDID Number is 836I004573. The General Permit requires UPR to submit an annual report by July 1 of each year.
5. Prior to the July 1, 2003 deadline, a notice from the State Water Resources Control Board (SWRCB) was mailed to UPR, indicating that a copy of the blank 2002-2003 Annual Report could be accessed via the internet, and that a hard copy would only be mailed if requested. Because the annual report was not submitted, a Notice of Noncompliance (NNC) was issued to UPR on August 1, 2003 by certified mail, requesting that the annual report be submitted within 30 days of the date of the letter. The return receipt shows that it was received at the UPR facility on August 8, 2003. A second NNC was issued on September 17, 2003, again by certified mail, requesting submittal of the annual report by October 18, 2003. The return receipt showed it was received on September 18,

October 18, 2003. The return receipt showed it was received on September 18, 2003. Both NNCs requested submittal of the completed annual report to the Board office by a specified date, a statement explaining why the annual report was not submitted by the July 1 deadline, and a description of measures that will be taken to ensure that future annual reports are submitted on time. The NNCs also warned UPR of the mandatory fines for failure to submit the annual report.


6. Since the annual report was not submitted by the specified date, Board staff contacted Mr. Duffy Exon, Environmental Manager at UPR, by telephone on October 21, 2003 and October 27, 2003. Mr. Exon was told about the mandatory penalty provisions of the Water Code for non-submittal of the annual report. Mr. Exon indicated that the delay was due to shortage of staff and that the report would be submitted in the near future. To date, the Annual Report has not been received. This facility violated the General Permit, the Federal Clean Water Act and the California Water Code by failing to submit the annual report by July 1, 2003.
7. Section 13399.33(c) of the California Water Code provides that the Regional Board shall impose a minimum penalty of \$1,000 for any person who fails to submit an annual report in accordance with Section 13399.31 of the Water Code.
8. Section 13385(a)(2) of the California Water Code provides that any person who violates waste discharge requirements issued pursuant to the Federal Clean Water Act shall be civilly liable. Section 13385(c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day the violation occurs.
9. Based on non-submittal of the 2002-2003 annual report, the facility is alleged to have violated the General Permit for 163 days (from July 2, 2003 to December 12, 2003). The maximum liability for this violation is \$1,630,000.
10. Section 13385(e) specifies factors that the Board shall consider in establishing the amount of civil liability. After consideration of those factors, the Executive Officer proposes that civil liability be imposed on Union Pacific Railroad in the amount of \$3,000 (\$1,000 of this amount will be suspended if the annual report is received by this office by January 5, 2004) for the violations cited above.

WAIVER OF HEARING

You may waive your right to a hearing. If you choose to do so, please sign the attached waiver form and mail it, together with a check or money order payable to the State Water Resources Control Board, for the amount of the penalty proposed under Paragraph 10. The bottom portion of the invoice, waiver form, and the check or money order should be mailed to Sacramento in the enclosed envelope.

If you have any questions, please contact Muhammad Bashir at (909) 320-6396 or Milasol Gaslan at (909) 782-4419. For legal questions, please contact the Regional Board's staff counsel, Jorge Leon, at (916) 341-5180.

12/12/03
Date



Gerard J. Thibeault
Executive Officer

In the matter of:)
)
)
Union Pacific Railroad)
1416 Dodge Street, Room 930)
Omaha, NE 68179)
)
Attention: Lanny A. Schmid)

Complaint No. R8-2003-0124
for
Administrative Civil Liability

WAIVER OF HEARING

I agree to waive the right of Union Pacific Railroad to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. R8-2003-0124. I have enclosed a check or money order, made payable to the State Water Resources Control Board, in the amount of \$ 3,000 (\$2,000 if the Annual Report is received by the January 5, 2004 deadline). I understand that I am giving up the right of Union Pacific Railroad to be heard and to argue against allegations made by the Executive Officer in this complaint, and against the imposition of, and the amount of, the liability proposed.

Date

for Union Pacific Railroad



California Regional Water Quality Control Board

Santa Ana Region



Terry Tamminen
Secretary for
Environmental
Protection

Internet Address: <http://www.swrcb.ca.gov/rwqcb8>
3737 Main Street, Suite 500, Riverside, California 92501-3348
Phone (909) 782-4130 - FAX (909) 781-6288

Arnold
Schwarzenegger
Governor

December 12, 2003

Mr. Lanny A. Schmid
Union Pacific Railroad
1416 Dodge Street, Room 930
Omaha, NE 68179

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R8-2003-0124, UNION PACIFIC RAILROAD, BLOOMINGTON, CALIFORNIA, WDID NO. 8 36I004573

Dear Mr. Schmid:

We are enclosing a certified copy of Complaint No. R8-2003-0124, proposing administrative civil liability of \$3,000 for failure to submit the annual report pursuant to the State's General Permit for Storm Water Discharges Associated with Industrial Activity (Order No. 97-03-DWQ, NPDES Permit No. CAS000001, General Permit). Of this amount, \$1,000 will be suspended if the annual report is received by this office by January 5, 2004. This is for the Union Pacific Railroad facility located at 19100 Slover Street, Bloomington, San Bernardino County (WDID No. 8 36S004573). An invoice and a preprinted envelope are also enclosed.

If necessary, a public hearing on this matter will be scheduled for the Regional Board meeting on January 22, 2004. The staff report regarding this complaint and the meeting agenda will be mailed to you not less than ten days prior to the Board meeting.

You have the option to waive your right to a hearing. Should you waive your right to a hearing and pay the proposed assessment, the Regional Board may not hold a public hearing on this matter. If you choose to waive your right to a hearing, please sign the enclosed Waiver Form and return it with a check for \$3,000 and the bottom portion of the invoice in the enclosed preprinted envelope. The check should be made payable to the State Water Resources Control Board.

If you do not wish to waive your right to a hearing, you may wish to schedule a pre-hearing meeting with the Board staff. Should you wish to schedule a meeting, please call us prior to January 6, 2004. At that time, you may submit information that may not have been previously available to staff regarding this incident. The information should address the following:

1. Nature, circumstances, extent, and gravity of the violation;

California Environmental Protection Agency



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2. Your ability to pay the proposed assessment;
3. Your degree of culpability;
4. Any prior history of violations;
5. Economic benefit or savings; and,
6. Such other matters as justice may require.

If you have any questions regarding this complaint, you may contact Mr. Muhammad Bashir at (909) 320-6396 or Ms. Milasol Gaslan at (909) 782-4419. All legal questions should be referred to our legal counsel, Mr. Jorge Leon, at (916) 341-5180.

Sincerely,



Gerard J. Thibeault
Executive Officer

Enclosures: Complaint No. R8-2003-0124, Waiver Form, Invoice, Preprinted Envelope

Cc: Regional Board
Bruce Fujimoto, State Water Resources Control Board, Division of Water Quality
Jorge Leon, State Water Resources Control Board, Office of the Chief Counsel
Kathi Moore, US-EPA, Region 9 (WTR-7)
Naresh Varma, San Bernardino County Public Works Department
Duffy Exon, Union Pacific Railroad, 2015 Willow Street, Bloomington, CA 92316
Lanny A. Schmid, Union Pacific Railroad, 19100 Slover St., Bloomington, CA 92316

